STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO Proposed general increase in electric delivery service rates.	))))	Docket No. 09-0306
Central Illinois Public Service Company d/b/a AmerenCIPS Proposed general increase in electric delivery service rates.	))))	Docket No. 09-0307
Illinois Power Company d/b/a AmerenIP Proposed general increase in electric delivery service rates.	))))	Docket No. 09-0308
Central Illinois Light Company d/b/a AmerenCILCO Proposed general decrease in gas delivery service rates.	))))	Docket No. 09-0309
Central Illinois Public Service Company d/b/a AmerenCIPS Proposed general increase in gas delivery service rates.	))))	Docket No. 09-0310
Illinois Power Company d/b/a AmerenIP Proposed general increase in gas delivery service rates.	)))	Docket No. 09-0311 (Consolidated)

BRIEF ON EXCEPTIONS ON REHEARING OF THE AMEREN ILLINOIS UTILITIES

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I. Introduction

Pursuant to the rehearing schedule adopted in this proceeding, Central Illinois Light Company (“AmerenCILCO”), Central Illinois Public Service Company (“AmerenCIPS”) and Illinois Power Company (“AmerenIP”) (together, the “Ameren Illinois Utilities” or “AIU”) hereby submit their brief on exceptions to the Administrative Law Judge's Proposed Order on Rehearing ("ALJPOR" or "Proposed Order") in Dockets 09-0306 – 09-0311 (Cons.). For the reasons explained below, the AIU's proposed exceptions to the ALJPOR shown in Appendix A should be adopted, along with related adjustments to numerical values in the Proposed Order's Findings and Ordering Paragraphs and its Appendices.

II. Issues On Rehearing

A. What is the appropriate application/interpretation of 83 Ill. Adm. Code 287.40 and 220 ILCS 5/9-211 in the context of adjustments to accumulated depreciation reserve?

As the Proposed Order notes, the Commission granted rehearing to determine whether it erred in deducting from rate base the pro forma increases in accumulated depreciation and accumulated deferred incomes taxes ("ADIT"). (ALJPOR, p. 26.) Prior to this case, a series of Commission orders expressly rejected a “roll forward” of accumulated depreciation on existing plant to offset post-test year plant additions included in a utility’s rate base. (Id., p. 27.) Based on those decisions, the AIU proposed to add post-test year plant additions, excluding new business investment, to test year plant without recognizing any increase to accumulated depreciation on existing plant. (Id., p. 6.) Now, during rehearing on this very issue, the Second District Appellate Court has ruled that a roll forward of accumulated depreciation is required to offset the pro forma plant additions approved in ComEd, 07-0566. (Id., p. 27.) Notwithstanding that decision, the Commission is charged with setting just and reasonable rates. Even if it were appropriate to deduct from rate base post-test year increases to accumulated depreciation and

ADIT on existing plant to counterbalance post-test year plant additions, the methodology used in calculating the adjustment must result in a "net plant" and rate base that accurately depicts the investment value used to provide service.

The Proposed Order asks whether the AIU's "pro forma adjustments for all non-transmission plant, excluding that associated with new business, should be accompanied by an adjustment reflecting ADIT and the accumulated depreciation balance through February 28, 2010 for plant existing at the end of the test year, December 31, 2008." (Id., p. 26.) In the wake of the Second District's opinion, it finds that an adjustment to recognize post-test year changes to accumulated depreciation and ADIT is consistent with Part 287.40 and Section 9-211. (Id., pp. 26-28, 49.) In light of that decision, the AIU will not reargue in exceptions why the adjustment is neither required nor appropriate to offset the AIU's pro forma additions to test year plant.

Rather, the AIU's exceptions on this issue (see Sections II.B, D and E) propose a mathematical correction to the way in which the Proposed Order calculates the adjustment in this proceeding. The methodology used to calculate the change to accumulated depreciation and ADIT is not appropriate largely because it undervalues rate base – indeed penalizing one utility with a *negative impact to rate base* for proposing a pro forma adjustment. (AIU Rep. Reh. Br., p. 9.) The Proposed Order states that "[a]ll adjustments are 'equal in nature.'" (ALJPOR, p. 26.) But the pairing of the full pro forma increase for accumulated depreciation and ADIT with only a portion of the plant investment placed in service during the same period is anything but a fair and balanced adjustment. As explained below, the Proposed Order and appendices should be amended to recognize only a certain percentage (73%) of the "roll forward" adjustment to the test year balances of accumulated depreciation and ADIT. (See Ameren Ex. 11.0RH Rev. (Stafford Reb.), pp. 6, 15-17; Ameren Ex. 11.1RH (Corr.); Ameren Ex. 11.2RH (Corr.).) As the AIU

explained in testimony, if the adjustment to the reserve were deemed appropriate, it had to properly match the amount of plant additions included in the proposed pro forma. The AIU's proposed 73 percent correction is consistent with the Second District's recent ComEd decision and results in an increase of approximately $7 million to the AIU's revenue requirement.

B. If an adjustment to accumulated depreciation reserve is appropriate, what methodology should be employed in making the adjustment?

The Proposed Order finds that the "*full* amount of the reserve for accumulated depreciation for the pro forma period associated with plant existing during the historic test year" should be included in rate base to offset the approved pro forma plant additions. (ALJPOR, p. 33 (emphasis added).) It suggests that the "full amount" of the pro forma increase to accumulated depreciation must be recognized so that AIU's approved rate base "does not exceed the investment value that the [AIU] actually uses to provide service." (Id., p. 27.) It thus determines that the "appropriate methodology" is to adjust rate base by adding the approved pro forma plant additions and subtracting the pro forma increase in the reserve for accumulated depreciation associated with plant existing at the end of the historic test year. (Id., p. 34.)

But in this instance, deducting the full amount of the pro forma increase to accumulated depreciation from the AIU's rate base is *not* the appropriate methodology for making this adjustment. Where the full amount of increases in jurisdictional utility plant anticipated to be or actually placed in service during the pro forma period is *not* included in rate base, deducting the full amount of the increases in accumulated depreciation and ADIT results in a rate base that lags behind the investment value actually used to provide service. (Ameren Ex. 11.0RH Rev., pp. 15-17.) Rather, the proper match in this proceeding on rehearing is to deduct only a percentage of the increases to accumulated depreciation and ADIT based on the ratio of pro forma plant additions to the total plant placed in service during the pro forma period. (Id., p. 16.)

It is undisputed that an additional, material amount of investment financed by the AIU over the pro forma period is not included in rate base. (ALJPOR, p. 45.) The added plant additions include new business investment specifically excluded from the pro forma, as well as other plant additions placed in service but not included in the pro forma. (Id.) In this case, the record demonstrates that the inclusion of the full pro forma increase of accumulated depreciation and ADIT results in an understated rate base net plant compared to the AIU's actual net plant. (AIU Init. Reh. Br., pp. 22-24.) In fact, the inclusion of the full pro forma increase results in a negative impact to rate base for one utility, AmerenIP Electric, even though that utility's net plant was increasing both before and during the pro forma period. (Id., pp. 9-10.) Thus, including in rate base the full pro forma increase for accumulated depreciation and ADIT, while excluding this additional investment placed in service during the pro forma period, results in a mismatch that materially understates the AIU's rate base. (Ameren Ex. 11.0RH Rev., p. 16.)

The inherent unfairness of the Proposed Order's adjustment demands an approach more refined to ensure that a utility is not penalized for seeking a pro forma plant adjustment. Indeed, the Proposed Order expressly recognizes that "multiple fact patterns may arise which could impact any ultimate adjustment." (ALJPOR, p. 54.) Here, there are materially different facts that do not justify deducting the full pro forma increase of accumulated depreciation and ADIT from rate base. It is simply not a solution that the utility must refrain from proposing a pro forma adjustment altogether if it is unable to support a pro forma adjustment that completely rolls forward the entire balance of plant. If gross additions to plant and increases to accumulated depreciation and ADIT are truly inseverable "opposing sides of a coin," then these "contemporaneous increases and decreases" to rate base must be measured consistently over the same period of time. It is simply not a consistent measurement to include the full amount of the

increase to accumulated depreciation and ADIT, but not the full amount of plant investment placed in service during the same period.

Thus, the inquiry into the methodology to calculate the proper adjustment in this instance cannot end by merely deducting from rate base the entire estimated pro forma increase in accumulated depreciation and ADIT. The appropriate post-test adjustment to accumulated depreciation and ADIT must factor in that the AIU proposed a less than complete roll forward of its anticipated distribution plant. It is material that the AIU specifically *excluded* new business investment from its pro forma adjustment – plant additions that ComEd specifically *included* in the pro forma adjustment approved in Docket 07-0566. (ComEd Ex. 21.0-C, Docket 07-0566, pp. 42-47.) The amount of post-test year plant not included in the pro forma (or otherwise disallowed as not known and measurable) should impact the measure of post-test year accumulated depreciation and ADIT.

Moreover, in this instance, the Commission must not ignore actual data presented on rehearing that demonstrates that the AIU's pro forma plant adjustment does not include all plant additions placed in service during the post-test year period. As the Proposed Order recognized, approximately $54.6 million of new business investment and $47.4 million of other plant additions were not included in the amount of plant additions in the pro forma. Staff concedes that it would not be fair and reasonable to roll forward any portion of the accumulated depreciation and ADIT balances, if only a few post-test year plant additions are included in rate base. (AIU Init. Reh. Br., p. 10.) It is no more fair and reasonable to roll forward the full balances of accumulated depreciation and ADIT, if only a portion of the pro forma plant investment is included in rate base.

The Proposed Order notes that the Commission may often not have actual values for plant additions throughout the pro forma period. (ALPJO, p. 34.) The data that the Commission may have in future proceedings is irrelevant to the determination of just and reasonable rates in this proceeding. Nor should the Commission disregard or discount data presented on rehearing that directly addressed the issue within the scope of rehearing, namely the appropriate adjustment to accumulated depreciation and ADIT. Indeed, Staff relied on the amounts actually spent on pro forma projects presented for the first time on rehearing – the actual allocation by account of the project charges – to specifically reject the adjustment to accumulated depreciation proposed by IIEC in the initial phase of this proceeding. (ICC Staff Ex. 1.0RH-R (Ebrey Dir.), p. 19.)

As Staff and Intervenors have noted repeatedly, the Commission must decide each case on its own merits. A record containing new evidence or argument that implicates past decisions compels reconsideration and requires a different result. Commonwealth Edison v. Illinois Commerce Comm'n, 2010 WL 3909376, at *14 (Ill. App. 2d Dist) (Sept. 30, 2010). Here, it is undisputed that the AIU did not propose – and the pro forma adjustment did not result in – a full roll forward of the plant in service balance. Moreover, the Commission has the power to deal freely with each situation that comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding. Id. In subsequent rate cases, a utility could estimate the plant investment expected to be placed in service by the end of the pro forma period to identify the percentage of total anticipated plant included in the pro forma. A utility also could update its actual plant additions during a pending rate case to further refine the pro forma to total plant percentage. But in this instance, the Commission knows – and should not ignore – the actual amount of plant placed in service that is included in the AIU's pro forma adjustment. Without suggesting that the same treatment must be accorded to all similar future situations, the

Commission should take advantage of the existence of actual cost information here to identify the portion of post-test year plant investment in service by the end of the pro forma period included in the approved adjustment.

The Commission must address in this proceeding how to calculate this adjustment where less than 100% of distribution plant anticipated to be or actually placed in service by the end of the pro forma period is included in a utility's proposed post-test year adjustment to plant. In this instance, the appropriate adjustment is to deduct from rate base 73 percent of the estimated pro forma period increase to accumulated depreciation and ADIT. Section II.B.5 of the Proposed Order should be amended – and the balances of accumulated depreciation and ADIT in its Appendices should be adjusted – consistent with the AIU's proposed exceptions language presented in Appendix A.

D. What is the appropriate adjustment, if any, to accumulated depreciation reserve in this proceeding (including any of the alleged "technical corrections")? What is the appropriate valuation of net plant at the end of February 2010?

As the Proposed Order recognizes, the AIU did not propose – and its pro forma adjustment did not result in – a complete roll forward of plant in service. (ALJPOR, pp. 26, 45.) The AIU specifically excluded from its pro forma plant adjustment any new business investment. (Id., p. 45.) Moreover, the amount of the AIU's actual gross plant additions during the pro forma period, even excluding new business investment, is materially higher than the amount included in the pro forma plant adjustment. (Id.) As explained above, the AIU should not be penalized for removing the new business investment from its pro forma adjustment. Nor should the full amount of pro forma increases to accumulated depreciation and ADIT be subtracted from rate base, when the full amount of the pro forma increases to plant is not added to rate base. In this instance, the Commission should not simply deduct from rate base the entire amount of the pro

forma increases to accumulated depreciation and ADIT. The Commission has the opportunity on rehearing and the data available to craft a fair and balanced approach. Appendix B to the AIU's Brief on Exceptions on Rehearing shows the necessary corrections to recognize only a percentage (73%) of the "roll forward" adjustment to accumulated depreciation and ADIT based on the ratio of pro forma plant additions to total actual plant additions during the pro forma period. Section II.D.5 of the Proposed Order should be amended – and the balances of accumulated depreciation and ADIT in its Appendices should be adjusted – consistent with the proposed exceptions language presented in Appendix A and the proposed 73 percent correction.

E. Is an adjustment to ADIT appropriate when the reserve for accumulated depreciation is adjusted? If an adjustment to ADIT is appropriate, what is the appropriate calculation of the adjustment to ADIT as of the end of the pro forma period in this proceeding?

If, as the Proposed Order suggests, it is permissible and appropriate to make a "companion" adjustment for post-test year changes in ADIT associated with existing plant, the ADIT balance needs to be adjusted in a manner similar to the accumulated depreciation balance associated with existing plant. For the reasons explained above and in prior testimony, the quantification of the adjustment to ADIT should be corrected so that only 73 percent of the pro forma increases to ADIT are deducted from rate base. As noted above, Appendix B to the AIU's Brief on Exceptions on Rehearing shows the necessary corrections to recognize only a percentage (73%) of the "roll forward" adjustment to accumulated depreciation and ADIT based on the ratio of pro forma plant additions to total actual plant additions during the pro forma period. Section II.E.5 of the Proposed Order should be amended – and the balances of accumulated depreciation and ADIT in its Appendices should be adjusted – consistent with the proposed exceptions language presented in Appendix A and the proposed 73 percent correction.

H. Clarification of issues concerning the Public Utility Revenue Act tax and its recovery.

The ALJPOR does not satisfy the requirement set forth in the Notice of Commission Action ("NOCA") to treat the PURA tax on a pass through basis. (ALJPOR, p. 85.) Specifically the ALJPOR falters by accepting Staff's position to fix the PURA line item as a static per-kWh rate. Such a rate cannot "pass through" the PURA tax directly to customers. Using a fixed rate approach, the amount customers ultimately pay will invariably depart from the tax assessed due to the difference between the kWh actually delivered to customers and kWh assumed pursuant to test year billing determinants. (See AIU Reply Reh. Br., p. 26.)

The NOCA explicitly directed that the PURA tax be completely removed from revenue requirement and recovered as a pass through tax along with other pass through taxes contained in the Tax Additions Tariff. All other taxes in the AIC Tax Additions Tariff are pass through taxes whereby the customer pays the amount of the tax liability, no more and no less. (See AIU Reply Reh. Br., p 29-30).

The terminology "pass through" has a plain meaning that is well recognized in the context of Illinois utility jurisprudence. A "pass through" charge recovers a cost directly from customers whereby the amount paid by customers is made to equal the cost imposed upon the utility. See General Motors Corp. et al v. Illinois Commerce Comm'n, 143 Ill.2d 407, 409 (1991); Central Illinois Light Co. v. Illinois Commerce Comm'n, 252 Ill. App. 3d 577, 590 (1993); Bass v. Prime Cable of Chicago, Inc., 284 Ill. App. 3d 116, 119-120 (1996); Archer Daniels Midland Co. v. City of Chicago, 294 Ill. App. 3d 186, 188 (1997); Commonwealth Edison Co. v. Illinois Commerce Comm'n, 2010 WL 3909376, pp. 19-20 (Ill. App. 2d Dist.) (Sept. 30, 2010); see also 220 ILCS 5/16-111.5 (using the term "pass through" to describe the rate mechanism designed to recover procured power and energy).

The ALJPOR also requires correction due to its reliance on Staff and IIEC's objections to the reconciliation mechanism as unnecessary. To the contrary, and as explained above, in order to achieve the intent stated in the NOCA, a true-up mechanism is *necessary* to recovery PURA as a "pass through tax." (See also AIU Reh. Rep. Br., pp. 25-26.)

Additionally, in contrast to the ALJPOR's finding, a reconciliation process would not complicate the regulatory process or otherwise be burdensome. AIU witness Jones testified that the true-up proposed would be simple to administer and presents a straight forward reconciliation. (Ameren Ex. 17.0RH, p. 13.) The arguments asserted by IIEC and Staff related to burden are conclusory and unsupported by record evidence, and therefore should not serve as the basis for a Commission finding. (See Staff Reh. Rep. Br., p. 14; IIEC Init. Br. p. 43; see also IIEC Reh. Rep. Br., p. 41 (retreating from its argument related to regulatory burden, IIEC attempts to re-characterize its position)

Further, the ALJPOR invokes an incorrect standard for AIC's PURA proposal on rehearing. Specifically, the ALJPOR found that the PURA tax expense did not "vary significantly" and therefore does not warrant reconciliation. However, the Commission is not required to make a finding per se that costs be "unexpected, volatile, and fluctuating" in order to approve a formula rate or rider-type tariff. Commonwealth Edison v. Illinois Commerce Comm'n, 2010 WL 3909376, pp. 19-20 (Ill. App. 2d Dist.) (Sept. 30, 2010). For example, Illinois appellate courts have found a rider is appropriate when costs result from legislative or government mandate beyond the utility's control. Id. A tax such as PURA fits into this category. A rider is also appropriate for a "pass through" expense. Id., p. 19. Thus, while it can be said the presence of "unexpected, volatile, and fluctuating" costs would support a rider-type approach, it

is not an element requisite to its approval. Therefore, the ALJPOR incorrectly applies this standard in its finding.

The ALJPOR also noted that AIU withdrew its proposal for a PURA true-up in the underlying docket. This is certainly true, but the AIU withdrawal of its original proposal cannot be said to restrict the Commission in this instance, given the NOCA's stated intent on rehearing. Moreover, a proposal inclusive of true-up and reconciliation was discussed in testimony entered into the record. Therefore, it can be said the record supports the finding and statement of intent contained in the NOCA.

Finally, the ALJPOR improperly relied upon IIEC's argument that the exact tax liability may not be conclusively known for several years after accrual. As a preliminary point, the same delay bears upon test year credit memo value, which was derived from usage in a year different from the taxable year. This results from the intended operation of the statute establishing the tax. 35 ILCS 620/2a.1 The delay in the issuance of the credit memoranda would not interfere with the operation of the Tax Additions Tariff. More importantly, the fact that there may be some delay in the Illinois Department of Revenue's issuance of the credit memo does not bear upon the issue at bar – implementation of the Commission's stated intent as set forth in the NOCA. The Commission clearly expressed its intent to establish PURA tax recovery on a pass through basis, listed on customer bills as a separate line item along with other taxes identified in the Tax Additions Tariff. The AIU's proposal accomplishes that end and will provide for bills inclusive of a PURA line item that passes through the tax liability.

III. Conclusion

For the reasons discussed herein, the AIU's proposed exceptions on rehearing to the Proposed Order should be accepted with related adjustments to certain numerical values in the Finding and Ordering Paragraphs and the Appendices.

Dated: October 15, 2010

Respectfully submitted,

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS, ILLINOIS POWER COMPANY d/b/a AmerenIP

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CERTIFICATE OF SERVICE

I, Mark A. Whitt, an attorney, hereby certify that on October 15, 2010, I served a copy of the foregoing BRIEF ON EXCEPTIONS ON REHEARING OF THE AMEREN ILLINOIS UTILITIES with appendices by electronic mail to the individuals on the Commission's Service List for Dockets 09-0306 – 09-0311.

By: */s/ Mark A. Whitt*
One of its attorneys